

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0032

Reversed
Request for Hearing Timely Filed
Merits Hearing Required

PROCEDURAL HISTORY: On September 16, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore disqualified from receiving unemployment insurance benefits effective August 11, 2024 (decision # L0006148754).¹ On October 1, 2024, claimant filed a timely request for hearing that the Department failed to recognize as a hearing request. On October 7, 2024, decision # L0006148754 became final without claimant having filed a recognized hearing request. On October 27, 2024, claimant filed a late request for hearing. On December 30, 2024, ALJ Christon conducted a hearing at which the employer and the Department failed to appear, and on January 6, 2025, issued Order No. 25-UI-278788, dismissing claimant's October 27, 2024, request for hearing as late without good cause and leaving decision # L0006148754 undisturbed. On January 11, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

¹ Decision # L0006148754 stated that claimant was denied benefits from August 25, 2024 to August 23, 2025. However, because decision # L0006148754 concluded that the work separation occurred on August 13, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 11, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

FINDINGS OF FACT: (1) Decision # L0006148754, mailed to claimant on September 16, 2024, stated, “You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **October 7, 2024.**” Decision # L0006148754 at 2 (emphasis in original). Claimant received decision # L0006148754 shortly after it was mailed.

(2) Claimant disagreed with decision # L0006148754 and sent an electronic message to the Department requesting a hearing on that decision. On October 1, 2024, a Department representative responded to claimant’s message with detailed instructions on how to request a hearing using Frances Online. The representative noted on claimant’s account: “working web notice: claimant request appeal, provide steps to appeal through their account.”² Claimant attempted to follow the instructions but encountered “some technical issue” and was unable to file a request through Frances Online at that time. Audio Record at 13:58.

(3) On October 27, 2024, claimant filed a request for hearing on decision # L0006148754 using Frances Online.

CONCLUSIONS AND REASONS: Claimant’s request for hearing was timely, and a hearing on the merits of decision # L0006148754 is required.

ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist.

OAR 471-040-0005 (July 15, 2018) provides, in relevant part:

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.

(2) A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed:

(a) By mail, fax, e-mail, or other means as designated by Employment Department **with** the appealable document; or

(b) In person at any publicly accessible Employment Department office in Oregon.

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

* * *

The request for hearing on decision # L0006148754 was due by October 7, 2024. The request for hearing claimant filed on October 27, 2024, was therefore late. However, the record shows that claimant's electronic message to the Department, sent on or before October 1, 2024, constituted a timely request for hearing.

Claimant's message expressed a present intent to appeal decision # L0006148754. The Department representative's note showed that they considered the message a "request [to] appeal" that decision. Further, claimant's electronic message was the equivalent of e-mail. Therefore, under OAR 471-040-0005(1) and (2)(a), the message was a request for hearing and should have been construed as such without requiring that claimant take further action.

Because claimant filed the request for hearing on October 1, 2024, within 20 days of the date decision # L0006148754 was issued, the request was timely, and a hearing on the merits of the decision is required. **DECISION:** Order No. 25-UI-278788 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Serres and A. Steger-Bentz;
D. Hettle, not participating.

DATE of Service: February 12, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-278788 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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